

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1628 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

KALYANDASJI GOMTIDASJI

Appearance:

Mr H L Jani, AGP for the State
Mr G M Amin with Mr P S Champaneri for Respondent No. 1
MR SHANTILAL S SHAH for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

Date of decision: 01/04/99

ORAL JUDGEMENT

By means of filing this Appeal under section

54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedures 1908, the appellants have challenged the legality of the judgment and award dated December 31, 1987 rendered by the learned Asstt.Judge, Surendranagar in Land Reference No.1/84.

2. A proposal to acquire agricultural land bearing survey No.320 of Village Dudhrej, Taluka Wadhwan, District Surendranagar for public purpose of Viramgam-Okha-Porbandar broad gauge conversion scheme was received by the State Government. On scrutiny of the said proposal, the State Government was satisfied that Survey No.320 of Village Dudhrej was likely to be needed for the said public purpose. Accordingly notification under section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') was issued which was published in the Official Gazette on April 7, 1977. The respondent No.1 who was owner of the land was served with notice under Section 4 of the Act and he had filed objections against the proposed acquisition. After considering his objections, the Land Acquisition Officer had forwarded his report to the State Government as contemplated by Section 5-A(2) of the Act. On consideration of the said report, the State Government was satisfied that the land at Survey No.320 of Village Dudhrej was needed for the public purpose of Viramgam-Okha-Porbandar broad gauge conversion scheme. Therefore, declaration under Section 6 of the Act was made which was published in the Government Gazette on April 2, 1980. The respondent No.1 was thereafter, served with notice under Section 9 of the Act for determination of compensation. The respondent No.1 appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.3.70 paise per sq.metre but having regard to the materials placed before him, the Land Acquisition Officer, by his award dated May 2, 1983, offered compensation to respondent No.1 at the rate of Re.0.87 paise to Re.1.33 paise for different kinds of lands of Survey No.320. The respondent No.1 was of the opinion that the offer of compensation made by the Land Acquisition Officer was inadequate. Therefore, he submitted application in writing requiring the Land Acquisition Officer to refer the matter to the Court for the purpose of determination of compensation. Accordingly reference was made to the District Court, Surendranagar which was numbered as Land Reference No.1/84. In the Reference Application, respondent No.1 pleaded that the lands acquired were very valuable and having regard to the overall development which had taken place near the acquired lands as well as the potentiality of the agricultural land for building purpose, he was entitled to higher compensation. In the Reference

Application, the respondent No.1 claimed compensation at the rate of Rs.3.70 paise per sq.metre. The Reference Applications were contested by the present Appellants vide a written statement at Exh.12. In the reply it was stated that the Land Acquisition Officer had taken into consideration of the relevant factors before making the award, and therefore, the Reference Application should be dismissed. Upon rival assertions made by the parties, the necessary issues for determination were raised by the Reference Court at Exh.13. In order to substantiate the claim advanced in the Reference Application, the respondent No.1 examined himself at Exh.21. On behalf of the present Appellants, two witnesses were examined namely; Parshottambhai Nanjibhai at Exh.22 and Valjibhai Dahyabhai Vaghela at Exh.28. On appreciation of evidence led by the parties, the Reference Court held that the income derived by the respondent No.1 from the sale of crops was Rs.10,000/- per acre per year. In the ultimate decision, the Reference Court has held that the respondent No.1 is entitled to compensation for the acquired lands at the rate of Rs.2.46 paise per sq.metre by the impugned judgment giving rise to the present Appeal.

3. The learned Asstt.Government Pleader submitted that the Reference Court was not justified in resorting to yield method for the purpose for ascertaining market value of the acquired lands, and therefore, the Appeal should be accepted. It was submitted that no cogent evidence was led by the respondent No.1 to establish that he was earning profit of Rs.10,000/- per acre per year from the sale of crops raised on the acquired lands, and therefore, the impugned award should be set aside. It was claimed that direction to pay additional amount of compensation as envisaged under Section 23(1-A) of the Act from the date of publication of notification under section 4(1) of the Act till the date of the award should not have been given, inasmuch as the possession of the acquired lands was taken on October 7, 1977 which is earlier than the date of award. What was stressed was that in view of the judgment of the Supreme Court rendered in the case of State of Marashtra v. Maharau Srawan Hatkar, reported in JT 1995 (2) SC 583, direction to pay interest on the additional amount of compensation as envisaged under Section 23(1-A) of the Act as well as amount of solatium as envisaged under Section 23(2) of the Act should not have been given and those direction should be set aside.

4. Mr G M Amin, learned Advocate for the claimants submitted that as sale instances were not produced by the

parties to enable the Court to determine market value of the acquired lands, the Reference Court was justified in resorting to yield method for the purpose of ascertaining market value of the acquired lands and the just award of the Reference Court should not be disturbed by the Court in the present Appeal. What was claimed was that as possession of the acquired lands was taken on October 7, 1977, the direction to pay interest at the rate of 9% for one year ought to have been given from October 7, 1977, and thereafter, at the rate of 15% till the date of realization of the amount and not from 1.1.1988. The learned Counsel vehemently submitted that determination of compensation by the Reference Court cannot be said to be on higher side at all, and therefore, the Appeal filed by the State Government should be dismissed.

5. We have heard the learned Counsel for the parties at length and we have also gone through the record of the case. Normally, methods of valuation are:

- (i) Opinion of experts
- (ii) The price paid within a reasonable time
in bona fide transactions of purchase of
sale of the lands acquired or of the
lands adjacent to those acquired and
possessing similar advantages, and
- (iii) No. of year's purchase of the actual or
immediately prospective profits of the
lands acquired.

Normally, the method of capitalising the actual or immediately prospective profits or the rent of number of year's purchase is not resorted to, if there is evidence of comparable sales or other evidence for computation of market value. In the present case, no sale instances either relating to the acquired lands or relating to the adjacent lands were produced by the parties to enable the Reference Court to determine market value of the acquired lands. Under the circumstances, we are of the opinion that the reference Court was justified in determining market value of the acquired lands on yield basis. The Supreme Court in the case of State of Gujarat and Ors. vs. Rama Rana & Ors. reported in 1997 (3) GLR 1954, has emphasized that the Court has statutory duty to subject evidence to great scrutiny and thereafter to award just compensation to the claimants in cases of compulsory acquisition of lands. If evidence led by the claimant is subjected to minute scrutiny, it becomes evident that the respondent was taking one crop in a year and was earning net profit of Rs.10,000/- per year from one acre of land. We may state that the other lands of Village Dudhrej were

placed under acquisition pursuant to publication of notifications published under Section 4(1) of the Act on June 28, 1973. The Land Acquisition Officer by different awards had granted different amounts of compensation and thereupon references were made to the District Court. In Land Acquisition Case No.2/84 to 22/84 and 37/84, the Reference Court had awarded compensation to the claimants at the rate of Rs.12/- per sq.metre. Feeling aggrieved by that award, First Appeals No.1555/88 to 1576/88 were filed by the State Government in the High Court and the Division Bench of the High Court, by judgment dated March 23, 1997, has held that the claimants of those cases were entitled to compensation at the rate of Rs.12/- per sq.metre for non-agricultural lands and Rs.9/- per sq.metre for agricultural lands. In view of the previous award of the Reference Court as modified by the High Court, it cannot be said that determination of compensation is excessive in any manner whatsoever so as to warrant interference by this Court in the present Appeal. On the contrary, we notice that the compensation determined by the Reference Court in this case is meagre but unfortunately, the claimant has neither filed cross-appeal nor cross-objections in the Appeal filed by the State Government, and therefore, we find it difficult to award higher compensation to him. We further notice that reference Court in this case was not justified in not applying any multiplier at all on the specious plea that compensation was to be paid by the State from public exchequer. It hardly needs to be emphasized that in case of compulsory acquisition of land, compensation has to be from public exchequer, but that does not mean that the claimants are not entitled to compensation as per law. In our view, appropriate multiplier ought to have been adopted by the Reference Court while ascertaining market value of the acquired lands on yield basis, in view of several reported decisions of the Supreme court. However, as noticed earlier, the claimant has not filed either cross-appeal or cross-objections and therefore, the amount of compensation awarded by the Reference Court cannot be enhanced in this Appeal. The finding of the Reference Court that annual income of the respondent No.1 from the lands under acquisition was Rs.10,000/- per acre after deducting expenses of cultivation is eminently just and is hereby upheld. In view of our finding that the compensation determined by the Reference Court is not on higher side, the Appeal cannot be entertained on question of quantum of compensation.

5. From the amount awarded, it becomes evident that the Reference Court has directed the Appellants to pay additional amount of compensation as envisaged under

Section 23(1-A) from the date of publication of Notification under section 4(1) of the Act till the date of the award i.e.. from April 7, 1977 to May 2, 1983. However, it is an admitted fact that possession of the acquired lands was taken on October 7, 1977. The date of taking possession of the acquired lands is earlier than the date of award, and therefore, the direction ought to have been taken by the Reference Court directing the Appellants to pay additional amount of compensation as envisaged under section 23(1-A) of the Act from April 7, 1977 to October 7, 1977. Under the circumstances, the direction given by the Reference Court to pay additional amount of compensation under section 23(1-A) of the Act from the date of publication of notification under section 4(1) of the Act till the date of the award, deserves to be set aside. Moreover, in view of the judgment of the Supreme Court in the case of the State of Maharashtra (Supra), direction to pay interest on the additional amount of compensation envisaged under sub-section 1A and 2 of section 23 should not have been given, and therefore, that direction also deserves to be set aside. We further notice that the Reference Court has directed the Appellants to pay interest at the rate of 9% from 1.1.1988 for a period of one year, and thereafter at the rate of 15% till the realization of the amount. As observed earlier the date on which possession of lands acquired was taken is October 7, 1977. Under the circumstance, the Reference Court should have directed the appellants to pay interest at the rate of 9% per annum w.e.f. October 7, 1977 and thereafter at the rate of 15% per annum till realization of the amount. Therefore, that direction also deserves to be modified suitably.

6. For the foregoing reasons, the Appeal filed by the appellants is partly allowed. It is held that market value of the acquired land on the relevant date was Rs.2.46 paise per sq.metre. The respondent No.1 would be entitled to additional amount of compensation as envisaged under section 23(1-A) of the Act from the date of publication of notification under Section 4(1) of the Act which is April 7, 1977 to the date of taking possession of the acquired land which is October 7, 1977. The direction given by the Reference Court to the Appellant to pay interest on amounts envisaged under Section 23(1-A) and 23(2) of the Act is set aside. The Appellant shall pay interest at the rate of 9% per annum from October 7, 1977 for a period of one year and thereafter at the rate of 15% till the realization of the amount. Rest of the directions given in the award regarding payment of solatium etc. are not disturbed and

are hereby upheld. There shall be no orders as to cost.

Office is directed to draw decree in terms of this judgment.

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mss.